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BEFORE THE STATE CORPORATION COMMISSION r

OF THE STATE OF KANSAS t

SEP 26 2012

In the Matter of Staffs Motion to the )

by

State Corporation Commismlon

Commission to Commence a Generic ) of Kansas

Proceeding to Address the Issues Concerning ) Docket No. 12-GIMT-170-GIT

The FCC USF Reform and Order and Effect )

OnKUSF )

NOTICE OF FILING REPORT

Staff hereby files a Report, attached hereto and made a part hereof by reference, regarding summary of briefs, summary of comments and reply comments, projected impacts of the FCC's USF/ICC Order on Kansas LECs, and discussion regarding potential conflicts between the FCC USF/ICC Order and Kansas statutes.

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Mark Sievers, Chairman Sam Brownback, Governor

Thomas E. Wright, Commissioner

Shari Feist Albrecht, Commissioner

STAFF REPORT

UTILITIES DIVISION

STATE CORPORATION  
COMMISSION

TO:

Chairman Mark Sievers  
Commissioner Thomas E. Wright SEP 20 2012  
Commissioner Shari Feist Albrecht

PATRICE PETERSEN-KLEIN  
EXECUTIVE DIRECTOR

FROM:

Christine Aames  
Sandy Reams

DATE:

September 14, 2012

DATE SUBMITTED TO EXECUTIVE DIRECTOR: \_\_\_\_q-'--+1=2.=0\_r-~..\_l;::\_2-\_\_

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DATE SUBMITTED TO COMMISSIONERS: \_\_CJ..:.....\_-Z\_\_\_\_,.G,.-\_- \_I\_L\_\_\_\_\_

SUBJECT:

DocketNo. 12-GIMT-170-GIT

In the Matter of Staffs Motion to the Commission to Commence a  
Generic Proceeding to Address Issues Concerning the FCC USF Reform  
and Order and the Effect on KUSF

I. EXECUTIVE SUMMARY

Commission Staff (Staff) submits this Report to provide an update on the activity in this  
Docket. In this Report, Staff is providing the following:

- Summary of briefs;
- Summary of comments and reply comments;
- Projected impacts of the Federal Communications Commission's (FCC's) USF/ICC Order<sup>1</sup> on the Kansas Local Exchange Carriers (LECs); and,
- Potential conflicts between the FCC's USF/ICC Order and Kansas statutes.

<sup>1</sup> See generally Connect America Fund; A National Broadband Plan for Our Future; Establishing Just and Reasonable Rates for Local Exchange Carriers; High-Cost Universal Service Support; Developing a Unified Intercarrier Compensation Regime; Federal-State Joint Board on Universal Service; Lifeline and Link-Up; Universal Service Reform-Mobility Fund; WC Docket Nos. 10-90, 07-135, 05-337, 03-109, CC Docket Nos. 01-92, 96-45, GN Docket No. 09-51, WT Docket No. 10-208, Report and Order and Further Notice of Proposed Rulemaking, FCC 11-161 (rel. Nov. 18, 2011) (USF/ICC Order and FNPRM).

## II. BACKGROUND

On September 13, 2011, the Commission opened this Docket in part to explore the impact that the FCC's universal service fund (USF) and intercarrier compensation (ICC) reform could have on Kansas and the Kansas Universal Service Fund (KUSF).

On October 27, 2011, the FCC adopted its USF/ICC Order. The Order was released on November 18, 2011. The Prehearing Officer took administrative notice of this FCC Order, located on the FCC's website on November 21, 2011. The Prehearing Officer observed that the Commission would consider the FCC's Order in determining further proceedings in this Docket and in its review of the issues in the course of this investigation.

On December 23, 2011, the Prehearing Officer set an informal industry conference with the active parties, to be moderated by Commission technical staff, for January 9, 2012, for the purpose of developing issues to be discussed in this Docket and for the purpose of having an informal discussion and development of a procedural schedule.

Following the technical conference on January 9, 2012, a Prehearing Conference was held for purposes of the parties providing the Commission with a proposed set of issues to be addressed and a proposal for a procedural schedule for discussing these matters on the record.

The parties advised the Prehearing Officer that, due to the complexity of and the potential changes (as a result of the pending petitions for reconsideration and appeals) to the FCC's Order, identification and isolation of issues and development of a procedural schedule was very difficult. The parties asserted they were still attempting to understand the effects of the Order and the parties believed a focused identification of issues and the setting of a procedural schedule was premature at that time. However, the parties advised that they had agreed on a list of issues to use as a foundation for further identification and prioritization of issues. The parties proposed that they submit comments addressing further identification and prioritization of these issues and proposed procedures and timelines for addressing these issues.

On January 11, 2012, the Prehearing Officer's Report & Order was issued, requesting comments be filed by March 1, 2012, and reply comments be submitted by April 2, 2012.

Initial comments were filed by MCI Communications Services, Inc. d/b/a Verizon Business Services, LLC, MCimetro Access Transmission Services, LLC d/b/a Verizon Access Transmission Services, and Cellco Partnership d/b/a Verizon Wireless (collectively Verizon); T-Mobile Central LLC (T-Mobile); Cox Kansas Telcom, LLC (Cox); N.E. Colorado Cellular, Inc., d/b/a Viaero (Viaero); USCOC of Nebraska/Kansas, LLC (US Cellular); Citizens' Utility Ratepayer Board (CURB); Eagle Communications, Inc. (Eagle); United Telephone Companies of Kansas d/b/a CenturyLink (CenturyLink); Southwestern Bell Telephone Company (SWBT), TCG Kansas City, Inc. (TCG), AT&T

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Communications of the Southwest, Inc. (ATTSW), AT&T Corp. (ATTC), SBC Long Distance, LLC (SBCLD), Bell South Long Distance, Inc. d/b/a AT&T Long Distance Service (BSLD), SNET America, Inc. d/b/a AT&T Long Distance East (SNET America), and New Cingular Wireless PCS, LLC (AT&T Mobility), collectively AT&T; Independent Telecommunications Group, Columbus et. al., State Independent Alliance, Southern Kansas Telephone Company, and Mutual Telephone Company, collectively the

Rural Local Exchange Carriers (RLECs); and Sprint Communications Company L.P., Sprint Spectrum L.P. d/b/a Sprint PCS, Nextel West Corp. d/b/a Nextel, and NPCR, Inc. d/b/a Nextel Partners, collectively Sprint Nextel. Reply Comments were filed by CURB, CenturyLink, and the RLECs.

On March 21, 2012, the Commission issued an Order requesting prehearing briefs be filed by April 16, 2012. The Commission requested briefs on the following legal questions relating to how these changes affect the KUSF:

(a) Does K.S.A. 66-2008(e) (or any other law) require the Commission to use and, if necessary, augment the KUSF to make up any FUSF or other federal revenue losses that rate of return ILECs incur resulting from changes in federal universal service and intercarrier compensation rules in the FCC's Order? Please address specific components of lost support or revenue separately, including but not limited to circumstances where:

(1) An ILEC loses federal revenues because under the FCC's revised rules, federal support is no longer provided in an area served by an unsubsidized competitor;

(2) An ILEC refuses Connect America Fund (CAF) federal support which is contingent on acceptance of broadband build out obligations while other forms of legacy FUSF support phases out; and,

(3) An ILEC realizes a reduction in federal revenues (in aggregate or on a per line basis) for any reason.

(b) Does the Commission have discretion to pay supplemental KUSF support to any qualified telecommunications carrier, public utility or wireless telecommunications service provider under K.S.A. 66-2008(d) or (t) (or any other law) to offset revenue losses resulting from changes in federal universal service or intercarrier compensation rules in the FCC's Order? Is it required to do so?

(c) In determining the level of KUSF support, can the KUSF net out gains and losses caused by changes in universal service and intercarrier compensation rules in the FCC's Order? For example, if a recipient loses FUSF loop support, but begins to receive CAF support for broadband instead, can the gain and loss be 'netted' against each other?

(d) In applying K.S.A. 66-2005(c), or 2008(d), (e) or (f) to determine KUSF support amounts, may the Commission consider revenues and expenses of services that the Commission does not regulate (e.g., broadband)? Please

answer for both rate of return and price cap carrier ILECs as well as other qualified telecommunications carrier or wireless telecommunications service providers.

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Briefs were filed by the RLECs, CenturyLink, Eagle, Cox, Sprint Nextel and Verizon, AT&T, tw telecom of kansas city llc (TWTC), and CTIA-The Wireless Association (CTIA).

### III. SUMMARIES LEGAL BRIEFS

Staff will provide summaries of the parties' briefs by topic and will begin with the parties' overall comments that weren't necessarily tied to a specific question.

CTIA, AT&T, and CenturyLink maintain that examination of the issues in this Docket is premature and should be delayed until the CAF has been established and the numerous . issues remaining to be addressed concerning the FUSF and ICC are settled by the FCC and the Courts. 2

The RLECs suggest that analysis of the questions posed by the Commission requires an underlying analysis of traditional rate of return regulation, which provides utilities with the reasonable opportunity to recover prudently-incurred costs, including a fair return on investment. The RLECs further state that given the sparse customer base and higher percustomer cost applicable in most RLEC telephone markets, there is no "just and reasonable" consumer rate that would satisfy the RLEC's Constitutional property rights. The RLECs assert that the only way they can recover revenue sufficient to meet the costs and recover the investments necessary for the RLECs' provision of public utility service is with external support?

Sprint Nextel and Verizon suggest the KCC should initially address what changes to the KUSF are necessary and appropriate to complement, and not thwart or conflict with, the FCC's initiatives.<sup>4</sup> TWTC, similarly, suggests the KCC should focus its inquiry on how to harmonize the existing KUSF with the FCC's reforms. 5

Cox advises the Commission to proceed with caution so that any reforms to the KUSF do not conflict with, or undermine, the federal reforms, particularly in light of the pending

appeals of the reforms in the United States Court of Appeals for the Tenth Circuit. Once there is more certainty regarding the reforms, the KUSF should be reformed in a manner that does not give any segment of the industry an unfair advantage in the competitive marketplace.<sup>6</sup>

2 CTIA Brief, pp. 1, 6.; AT&T Brief, 't[ 3; Century Link Brief, pp. 1-3.

3 RLECs Brief, 't[t[ 3-8.

4 Sprint Nextel & Verizon Brief, 'lf 6.

5 TWTC Brief, 'lf 3.

6 Cox Brief, Introduction.

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Issue A: Does K.S.A. 66-2008(e) (or any other law) require the Commission to use and, if necessary, augment the KUSF to make up any FUSF or other federal revenue losses that rate of return ILECs incur resulting from changes in federal universal service and intercarrier compensation rules in the FCC's Order? Please address specific components of lost support or revenue separately, including but not limited to circumstances where: (1) An ILEC loses federal revenues because under the FCC's revised rules, federal support is no longer provided in an area served by an unsubsidized competitor; (2) An ILEC refuses Connect America Fund (CAF) federal support which is contingent on acceptance of broadband build out obligations while other forms of legacy FUSF support phases out; and, (3) An ILEC realizes a reduction in federal revenues (in aggregate or on a per line basis) for any reason.

The RLECs argue that the FCC's USF/ICC Order is unconstitutional and recognize that numerous other entities do so, as well, given that over thirty petitions for judicial review are pending in the 10th Circuit Court of Appeals. If, however, the ultimate outcome is that the FCC's USF/ICC reforms stand, the RLECs argue that the KUSF is one available mechanism to address the resulting insufficient cost recovery. The RLECs argue that if no other means is available, the KUSF is required to make up the shortfall to the intrastate portion of costs and investments. <sup>7</sup>

The RLECs further aver that it would be a violation of carriers' private property rights, at least as to embedded costs and investment, to terminate a carrier's support without

providing an effective and reliable alternate means of constitutionally sufficient recovery. 8 If an RLEC declined to assume new build-out obligations due to the insufficiency or unpredictability of available cost recovery mechanisms, the RLEC would retain a constitutional and statutory right to recovery of embedded investment and costs incurred to provide the mandated service under rules existing at the time the investment was made (K.S.A. 66-2008(e)).<sup>9</sup> The RLECs argue that they have a right to KUSF recovery to the extent federal support loss affected recovery of costs or investments assigned to the intrastate jurisdiction. <sup>10</sup>

According to AT&T, rate of return carriers' KUSF support is to be based on the carrier's embedded costs, revenue requirements, investments and expenses, pursuant to K.S.A. 66-2008(e). If the Commission determines that the lost FUSF or the undefined "federal revenue losses" are part of the RLECs' embedded costs, revenue requirements, investments and expenses, then an argument could be made that KUSF funds could be made available to offset such losses. AT&T, however, notes that application of the Kansas statutes governing the KUSF should not be made in a vacuum that ignores the policy goals that lead to the hypothetical results underlying the question. <sup>11</sup>

7 RLECs Brief, ~ 9-11.

8 Id., ~ 12.

9 Id., ~ 13.

10 Id., ~ 14.

11 AT&T Brief, ~ 4.

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CenturyLink states that even though K.S.A. 66-2008(d) permits a rate of return LEC to seek supplemental KUSF funding under certain circumstances and the Commission has an obligation to review the filing, the receipt of such funds and the amount of funding

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According to Cox, augmenting the KUSF to offset reductions in FUSF would reduce the effectiveness of the federal reforms by simply filling the void without requiring the



incumbent local exchange carrier (ILEC) to take any steps toward providing broadband services; limiting excessive capital, operating and corporate expenses; eliminating artificially low end-user voice rates; or, addressing the FCC's decision to reduce subsidies for companies operating in regions where unsubsidized facilities are available. Cox suggests the Commission refrain from providing additional KUSF support to ILECs that lose support due to the presence of an unsubsidized competitor and it should not reward carriers that choose not to comply with the FCC's broadband requirements.

Cox further argues that the Commission is under no obligation to provide KUSF support in order to make rate of return ILECs (or any other carriers) whole as a result of the FCC's reforms. K.S.A. 66-2008(e) only requires that, for carriers electing to operate under traditional rate of return regulation, KUSF support "be based on such carrier's embedded costs, revenue requirements, investments, and expenses." Cox suggests the Commission could provide support "based on" a percentage of the carrier's costs and expenses and require rate of return regulated carriers to make up the difference through alternative sources of revenue. Cox further asserts that the Commission must look at whether the carrier has additional sources of revenue upon which it can draw, whether the costs indicate it is operating efficiently, and whether the end-user charges are reasonably comparable with those paid by other rural consumers in the state before even considering providing additional KUSF funding. 13

Eagle states that when the KUSF was originally conceived, there was a presumption that consumers in high-cost areas only had one option for these services -the ILEC. Eagle asserts that time has evolved and competitors are offering universal and enhanced universal service in high-cost areas. If an unsubsidized competitor is offering consumers all services outlined in K.S.A. 66-1,187(p) and (q), then either both the unfunded competitor and the ILEC should be eligible for KUSF or neither the unfunded competitor nor the ILEC should be eligible for KUSF. Eagle suggests continuing KUSF support to the ILEC is neither appropriate nor consistent with the competitive neutrality provisions of K.S.A. 66-2008(b).

Eagle further suggests that nothing in K.S.A. 66-2008(e) requires the Commission to use or augment the KUSF to make up for any revenue losses that rate of return regulated ILECs incur because under the FCC's revised rules federal support is no longer provided in an area served by an unsubsidized competitor. 14 If an ILEC realizes a reduction in federal revenues, Eagle asserts that an ILEC may seek additional funding from the KUSF.

12 CenturyLink Brief, n 15-18.

13 Cox Brief, pp. 3-7.

However, Eagle suggests the Commission evaluate each application on its own merits, and the Commission is under no obligation to reimburse an ILEC for any or all of its prior FUSF distributions. The Commission should only consider granting additional funding to an ILEC if, and only if, there is not an unfunded competitor offering services in a particular exchange. 15 Eagle further indicates it does not believe the Commission has any obligation to increase the KUSF to make up for any losses that rate of return regulated ILECs incur as a result of the intercarrier compensation rules in the FCC's Order. 16

Sprint Nextel and Verizon state that K.S.A. 66-2008(e) provides that rate of return regulated ILECs' KUSF support shall be based on such carrier's embedded costs, revenue requirements, investments and expenses. In addition, the Kansas Court of Appeals held in the Bluestem case 17 that the Commission could not distribute KUSF support on a per-line basis to rate of return regulated carriers because only the carrier's embedded costs, revenues requirements, investments, and expenses may be considered with the respect to any adjustment to the carrier's support. Sprint Nextel and Verizon argue that it is not evident that K.S.A. 66-2008( e) or the Bluestem case would "require" the Commission to augment the RLECs' KUSF support to compensate for decreased revenues due to the FCC's reform.

According to Sprint Nextel and Verizon, if one were to interpret Kansas law as "requiring" the Commission to augment RLECs' KUSF support in this manner, this would violate Section 254(f) of the Telecommunications Act. Section 254(f) states, in relevant part, that "[a] State may adopt regulations not inconsistent with the Commission's rules to preserve and advance universal service." Sprint Nextel and Verizon assert that a system that compensates LECs for access lines lost instead of incentivizing them to operate more efficiently is plainly in direct conflict with federal law. Furthermore, Sprint Nextel and Verizon argue that the FCC's Order establishes a procedure under which qualifying rate of return regulated LECs can petition the FCC for additional support through a waiver process. At a minimum, Sprint Nextel and Verizon argue that LECs must exhaust the waiver application remedy provided by the FCC prior to looking to the KUSF for funding. 18

Sprint Nextel and Verizon further argue that it would clearly violate Section 254(f) of the Federal Act if the Commission were to augment KUSF support to compensate for: (1) reductions in federal support in areas where there is an unsubsidized carrier; (2) in areas where a LEC does not receive support because they do not (or refuse to) satisfy the obligations with such support; or (3) revenue reductions resulting from circumstances in which the FCC has explicitly stated it is inappropriate for LECs to receive support, whatever those circumstances may be. 19

15 Eagle Brief,~~ 9-12.

16 Initial Comments ~ 5.

17 Bluestem Telephone Company, eta/, v. Kansas Corporation Commission, 33 Kan. App. 2d 817 (2005).

18 Sprint Nextel and Verizon Brief,~~ 7-12.

19 Id. at~~ 13-15.

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Issue B: Does the Commission have discretion to pay supplemental KUSF support to any qualified telecommunications carrier, public utility or wireless telecommunications service provider under K.S.A. 66-2008( d) or (f) (or any other law) to offset revenue losses resulting from changes in federal universal service or intercarrier compensation rules in the FCC's Order? Is it required to do so?

The RLECs assert that K.S.A. 66-2008(f) provides the Commission discretion to provide additional KUSF support upon a showing of a general revenue deficiency but the statute does not specify the precise cause of such deficiency. K.S.A. 66-2008(d) provides for recovery of shortfalls due to the specific causes enumerated in the subsection. The RLECs further argue that K.S.A. 66-2005 and 66-2008 expressly require KUSF support as a replacement for lost rate revenue due to access rate reductions? 0

AT&T states that the language of K.S.A. 66-2008(d), on its face, would appear to make additional funding available to those described carriers as a result of shortfalls due to the FCC USF/ICC Order. AT&T suggests subsection (f) may provide another avenue for seeking additional funds. Both subsections, however, provide for a review process for the additional funding requests, which in the absence of direct language for the awarding

of additional funding implies that the Commission is vested with discretion in determining whether to pay additional, supplemental KUSF. 21

CenturyLink avers that under K.S.A. 66-2008(f), unless a request for supplemental funding is made based on one of the five criteria set forth in K.S.A. 66-2008(d), the Commission has discretion about whether or not to grant such a request. Supplemental KUSF support available in K.S.A. 66-2008(d) is only available for the five items identified in that subsection, but (d) does not provide the Commission the same discretion as subsection (f). CenturyLink suggests, however, that this does not equate to a filing under (d) as merely perfunctory. Century Link opines that a requesting carrier still must provide the appropriate documentation, which is subject to review and challenge by the Commission, Staff, and interveners?<sup>2</sup>

Sprint Nextel and Verizon argue that, under the circumstances described, augmentation of KUSF would violate Section 254(f) and is therefore prohibited. Therefore, whether the Commission "has discretion" or is "required" to augment KUSF support under Kansas law is moot if such actions would violate federal law. 23

Eagle asserts that the only Kansas statute that requires additional KUSF support as the result of actions taken by the FCC is K.S.A. 66-2005(c)(1); however, the Commission, upon application and review, has the discretion to pay supplemental KUSF to any qualified telecommunications carrier, public utility or wireless telecommunications service provider under K.S.A. 66-2008(d) and (f) as long as such KUSF supports the

20 RLECs Brief, '11[ 15-19.

21 AT&T Brief, '11 5.

22 CenturyLink Brief, '11[ 22-27.

23 Sprint Nextel and Verizon Brief, '11 16.

provision of universal service or enhanced universal service and such supplemental KUSF is available on a competitively neutral basis?<sup>4</sup>

Cox asserts that nothing in the statutes requires the Commission to pay supplemental KUSF to any qualified carrier. Rather, it is completely discretionary. Cox further asserts

that the FCC's Order adopted a specific waiver process for carriers that "clearly demonstrate[] that good cause exists for exempting the carrier from some or all of [the] reforms." Cox suggests the Commission consider imposing similar requirements upon any carrier requesting supplemental KUSF support?<sup>5</sup>

Issue C: In determining the level of KUSF support, can the KUSF net out gains and losses caused by changes in universal service and intercarrier compensation rules in the FCC's Order? For example, if a recipient loses FUSF loop support, but begins to receive CAF support for broadband instead, can the gain and loss be 'netted' against each other?

The RLECs argue that the rights of eligible carriers under rate of return regulation relate to a sufficient totality of the opportunity for recovery. For example, if CAF support is sufficient for certainty, amount, and duration to satisfy the constitutional requirement, then it could be a lawfully sufficient replacement for FUSF loop support. Under rate of return regulation, carriers are entitled to neither more nor less than an overall sufficiency.<sup>26</sup>

AT&T states that Kansas statutes do not directly address this point and, due to ongoing deliberation and proceedings at the FCC, AT&T does not have a legal opinion at this time?<sup>7</sup>

CenturyLink asserts the KUSF may be able to net out certain gains and losses caused by changes in FUSF and ICC reforms; however, CenturyLink believes it is premature to address specific scenarios until the FCC releases additional details.<sup>28</sup>

Eagle asserts the Commission may net out gains and losses caused by changes in USF and ICC rules; however, the Commission is under no obligation to offset reductions in total federal support with KUSF support.<sup>29</sup> Cox asserts the Commission can and should net the gains and losses caused by changes in the federal rules. <sup>30</sup>

Sprint Nextel and Verizon argue that any augmentation of KUSF payments to compensate for federal support from circumstances in which the FCC has said it is inappropriate to receive support would violate federal law. Even if that were not the

<sup>24</sup> Eagle Brief, n 13-14.

<sup>25</sup> Cox Brief, pp 7-9.

<sup>26</sup> RLECs Brief, ~ 21.

<sup>27</sup> AT&T Brief,~ 6.

28 CenturyLink Brief, ~ 29.

29 Eagle Brief, ~ 15.

3° Cox Brief, pp. 9-10.

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case, K.S.A. 66-2008(e) provides that a LEC's "revenue requirements" be taken into account for purposes of calculating KSUF support. To the extent an ILEC receives federal support from any source, such support should decrease the LEC's "revenue requirements."<sup>31</sup>

Issue D: In applying K.S.A. 66-2005(c), or 2008(d), (e) or (f) to determine KUSF support amounts, may the Commission consider revenues and expenses of services that the Commission does not regulate (e.g., broadband)? Please answer for both rate of return and price cap carrier ILECs as well as other qualified telecommunications carrier or wireless telecommunications service providers.

K.S.A. 66-2008(d) provides that supplemental KUSF may be authorized for enumerated items, and one of those enumerated items is that KUSF support may be authorized "for infrastructure expenditures in response to facility or service requirement established by any legislative, regulatory or judicial authority." The RLECs aver that if any legislative, regulatory or judicial authority, not limited to Kansas, establishes a facility or service requirement for an eligible carrier to provide a non-regulated service such as broadband, then the carrier has a constitutionally protected right to recovery of its costs and investments. The RLECs argue that the Commission needs to determine how, not whether, that right will be satisfied and, to date, the KUSF is the sole means of statutorily identified (in addition to rate revenues) recovery by a RLEC.<sup>32</sup>

With regard to price cap carriers, the RLECs assert price cap carriers are afforded a potential remedy under K.S.A. 66-2005(g), which authorizes the Commission to review and modify the price cap formula to "balance the public policy goals of encouraging efficiency and promoting investment in a quality, advanced telecommunications network in the state."<sup>33</sup>

CenturyLink asserts that nothing in K.S.A. 66-2005(c), (d), (e), or (f) provides the Commission authority to consider non-regulated revenues and expenses in determining primary KUSF support or "supplemental KUSF" support for any carrier including rate-of-return regulated, price cap, other qualified carriers, or wireless providers?<sup>4</sup>

AT&T asserts that, pursuant to K.S.A. 66-2008(c), the Commission cannot consider the revenues and expenses of services that it does not regulate to determine KUSF amounts, only the revenues and expenses associated with the provision of local service.<sup>35</sup>

Cox suggests that nothing in the Kansas statutory framework precludes the Commission from such consideration. Cox urges the Commission to revisit its cost-allocation regulations for ILECs, and consider either: (1) adopting a holistic approach to

31 Sprint Nextel and Verizon Brief, 't[ 17.

32 RLECs Brief, 't[ 22.

33 Id. at 't[ 23.

34 CenturyLink Brief, 't['t[ 30-32.

35 AT&T Brief, 't[ 7.

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determining support that considers all revenues earned by an ILEC, or (2) revisiting and strictly enforcing its existing regulations that require carriers to allocate costs fairly to facilities used to provide both regulated and non-regulated services. K.S.A. 66-2008(e) permits the Commission to make adjustments to KUSF support based on a carrier's "embedded costs, revenue requirements, investments and expenses". Cox suggests broadband services and cable services provided by a provider be considered to constitute investments. Cox believes this to be particularly true to the extent that carriers use their KUSF and FUSF supported facilities to provide these unregulated services, as this provides an additional basis for including these revenues in the Commission's consideration of a carrier's overall financial situation. 36

Sprint Nextel and Verizon, again, argue that any augmentation of KUSF payments to compensate for revenue reductions resulting from circumstances in which the FCC has said it is inappropriate for LECs to receive would violate federal law. Even if that were not the case, K.S.A. 66-2008(e) provides that aLEC's "revenue requirements" are to be taken into account. The FCC's Order made it clear that in examining petitions for a waiver, it will take into account not only revenues derived from network facilities that are supported by universal service but also revenues derived from unregulated and unsupported services as well. 37 Any examination of KUSF support must be consistent

with federal law. 38

According to Eagle, to the extent the KUSF may be used to fund broadband, its definition must be clarified in the Kansas statutes. 39

## INITIAL COMMENTS & REPLY COMMENTS

Due to the diversity of the comments received, Staff has summarized the parties' initial and reply comments by party rather than by topic.

### Summary of Initial Comments

#### RLECs

The RLECs state it is premature to identify specific policy considerations that should be the basis for Kansas' telecommunications policy, especially given the numerous petitions for reconsideration and legal review. Until these outcomes are known, the items that may warrant modification to the KUSF are unknown. Once there is more certainty to the FCC's Order and the resulting reforms, the RLECs believe the legal issues could be addressed through briefs.

The RLECs propose the following issues, identified in Attachment 2 to the Prehearing Officer's Order, be briefed:

36 Cox Brief, pp. 10-11.

37 FCC USF/ICC Order, ~ 540.

38 Sprint and Verizon Brief, ~ 18.

39 Eagle Brief, ~ 16.

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1.  
To what extent is the Commission's general authority to modify the KUSF limited by other constitutional or statutory authority?
2.  
Does the Commission have authority to adopt additional regulations to advance and preserve universal service and to review and redefine universal service/enhanced universal service?



3.

In what specifics does the FCC's Order explicitly mandate modification of any provision of state universal service funds, and do the provisions of the KUSF require modification in response to such mandate(s)?

4.

How would the definition and statutes need to be modified if broadband is included as a universal service or enhanced universal service?

5.

Does the FCC requirement for eligible telecommunications carriers (ETCs) to utilize FUSF for broadband deployment necessitate any changes to the KUSF?

6.

Whether, and to what extent, this Commission has the statutory authority to include broadband as a universal service or enhanced universal service?

7.

Is broadband an interstate service?

8.

Does the carrier of last resort (COLR) obligation remain for voice services or basic (voice) services for ETCs providing only voice services?

9.

What obligation does the Commission have to provide KUSF support to carriers that have no COLR obligations?

10. Does current KUSF support remain or is it transitioned to a more incremental support to move to supporting broadband?

11. Does refusal

of CAF have any effect on the refusing carrier's obligations under state law, and would any such effect impact the Commission's regulatory responsibilities?

12. Does the FCC's Order affect the KCC's dispute resolution obligations under state and federal law and, if so, how?

13. Is the

Commission obligated under current rules to offset FUSF reductions through increases in the KUSF? Should those rules be revised? Would statutory changes be required?

14. Does the KUSF have any responsibility for ICC recovery?

15. Does moving to "bill and keep" provide sufficient, predictable support?

16. Brief the legal issues surrounding property rights and revenues used in determining a rate-of-return carrier's intrastate revenue requirement.

17.

Brief the issues of controlling authority to define the lawful scope of policy

determinations related to competitive ETCs that are available to the Commission.

The RLECs propose the following issues, identified in Attachment 2, be addressed via comments and/or testimony:

1.

Do the Commission's ETC requirements need to be modified to allow for simultaneous reporting to both the FCC and the KCC?

2.

How can we keep the KUSF sustainable?

3.

Should the KUSF be used as an incentive to acceptance of CAF support?

The RLECs do not propose that a procedural schedule be adopted at this time. Instead, the RLECs propose the Commission wait until the proposed federal reforms become more stable and reliable to set a procedural schedule.

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#### CenturyLink

CenturyLink indicates it believes it is premature to discuss the majority of the issues given the many uncertainties associated with the FCC Order. CenturyLink asserts that the parties should have a clearer picture of the issues that need to be addressed by the Commission as the FCC rulemaking proceedings progress, the CAP model is developed, and the legal proceedings are resolved. If the Commission acts too soon and the FCC Order is successfully appealed, in part or in whole, the Commission and all parties involved may need to revisit, or possibly, reverse, what has been done. Instead, the proceeding should be approached in multiple phases and first address those issues that are not dependent upon the ongoing legal challenges to the FCC's Order.

CenturyLink suggests the Docket be addressed in 2 phases:

Phase 1: Issues that can be addressed through legal briefs and comments.

1.

To what extent is the Commission's general statutory authority to modify the KUSF limited by other constitutional or statutory authority? Parties could comment on the Commission's general authority, but the legal analysis may

depend upon the proposed KUSF modifications. If this issue is briefed, should provide 90 days to prepare brief and 45 days for responsive briefs.

2.

Does the Commission have authority to adopt additional regulations to preserve and advance universal service? Does it have authority to review and redefine universal and enhanced universal services?

3.

Does the COLR obligation remain for voice or basic services for ETCs providing only voice service? This legal issue could be briefed up-front, with 90 days to prepare initial briefs and 45 days for responsive briefs.

4.

What obligation does the Commission have to provide KUSF support to carriers that do not have any COLR obligations? This includes both legal and policy issues. The legal portions should be briefed, with 90 days for initial briefs and 45 days for reply briefs.

5.

What role does the Commission have in advising and resolving complaints/disputes that arise as the FCC rolls out the CAF and ICC reforms? This legal issue could be briefed, with 90 days for initial briefs and 45 days for reply briefs.

Phase 2: Issues that cannot be addressed until further impacts/clarification of FCC Order occurs.

Century Link suggests it is premature to address issues that rely on the evaluation of the impact of FUSF and ICC reforms on the KUSF due to fact that key components are not known.

In addition to the unanswered questions surrounding the FCC's Order, CenturyLink notes there are over one hundred pages seeking comment in the Further Notice of Proposed Rulemaking (FNPRM) portion of the Order. Century Link asserts that it is impossible to take into account the impact of USF /ICC reforms when most of the effects of the Order cannot be determined until the FCC releases further Orders on the issues in the FNPRM.

For 2012, carriers will receive FUSF, and immediate changes to ICC reform will not have an immediate impact to the KUSF, and potential loss of ICC revenue may be subject to a separate carrier-specific proceeding. When CAF Phase II is implemented, there may be

an impact to the KUSF. Thus, the KCC should adopt a multi-phase approach.

#### AT&T

AT&T believes some issues can be addressed to move the proceeding forward; however, AT&T asserts it is premature to formulate a definitive list of issues to consider within this proceeding. AT&T suggests the issues listed in Attachment 2 of the Prehearing Officer's Order may be too aggressive, given the status of matters pending related to the FCC's Order.

AT&T suggests the following issues could be initially briefed:

1.  
Definition of universal service/enhanced universal service and the related KCC jurisdictional issues;
  2.  
Statutory changes needed as a result of the FCC's Order;
  3.  
Incumbent LEC regulatory and statutory COLR and ETC obligations; and
  4.  
Any statutory obligation to offset Federal USF reductions through KUSF funding.
- AT&T further suggests the following items could initially be addressed through comments:

1.  
The impact that ICC Reform may have on the KUSF; and
  2.  
How the FCC's ETC designation and reporting requirements correlate to the KCC's designation and reporting requirements.
- AT&T suggests the Commission provide for simultaneous initial briefs and comments to be due within a 60 to 90 day period, with responsive briefs and comments due 30 to 45 days after the initial briefs and comments.

#### Cox

Cox has not identified any issues beyond those identified in Attachment 2 and has not prioritized those issues at this time; however, Cox proposes the following procedural schedule:

1.  
Parties should file Initial Briefs on legal issues on June 1, 2012, and Reply Briefs

on July 2, 2012.

2.  
For policy-related issues, the Commission should hold a round table or industry meeting to discuss the FCC Order status, with the round-table/meeting held in late summer or early fall 2012.

Eagle

Eagle believes KUSF support should no longer be available to an incumbent provider where there is an unsubsidized competitor offering broadband service and USF dollars (state or federal) should be utilized to support the development of broadband in unserved areas of the state of Kansas.

Eagle suggests the following issues be addressed through briefs:

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1.  
The definition of universal service/enhanced universal service, including:
  - a.  
To what extent is the Commission's general, constitutional, and statutory authority to modify the KUSF limited by constitutional or statutory authority?
  - b.  
Does the Commission have authority to adopt additional regulations to advance and preserve universal service?
  - c.  
Does the Commission have the authority to review and redefine universal service and enhanced universal service?
  - d.  
Does the FCC's requirement that ETCs use Federal USF support for broadband deployment necessitate changes to the KUSF (e.g. to provide support for basic voice, but not broadband services, to high cost areas, and those that may be eligible for FUSF support under the new rules)?
2.  
Should the statutory and/or COLR obligations and policies be reviewed by the Commission, given the FCC's reforms, including:
  - a.  
Should KUSF support for ETCs serving areas where competitors exist be expanded to offset any FUSF reductions and how does the Commission

ensure the KUSF compliments the CAF?

b.

As the CAF is not intended to provide support if an unsubsidized competitor serves the area, what KUSF policies may need revised to ensure the FCC's goals are not frustrated?

c.

Does the KUSF remain in its current state, or should it be transitioned to an incremental support fund for broadband?

Eagle suggests the following issues be addressed through comments or testimony:

1.

What role does the Commission have in ensuring FUSF support will be used for its intended purposes and not undermine competition?

2.

How can we keep the KUSF sustainable?

3.

Should the KUSF be phased out or eliminated, and what would be the impact to Kansas consumers and the telecommunications industry?

4.

Should competitive ETCs continue to receive KUSF support or should it be eliminated?

5.

Should the KUSF support both landline and wireless or should the Commission differentiate in funding mobile and broadband services?

6.

If competitive ETCs continue to receive KUSF support, what basis should be used to determine the support (e.g. identical support rule, competitive ETC's own costs, etc.)?

Verizon

The Commission should only consider implementing the FCC Order and phasing out the KUSF. Commission need not concern itself with any other issues identified, except to the extent the issues relate to implementing the FCC Order or reducing and eliminating the KUSF. The Commission should consider: (1) the scope of its authority to reduce and eliminate the KUSF; (2) whether there is any ongoing need for the KUSF; and (3) whether the KUSF should be eliminated on a flash-cut basis or through a brief transitional period.

## Sprint Nextel

Sprint Nextel's issues list is as follows, with issues listed in the order in which Sprint Nextel believes they should be considered by the Commission:

1.  
In light of the FCC's adoption of a comprehensive intercarrier compensation reform framework, including the restructuring of federal recovery mechanisms, should the KUSF be phased out or eliminated, and if so, what is the impact on the industry and consumers? Sprint Nextel suggests a Commission Order be issued on this issue by end of summer 2012.
  2.  
If the KUSF is not eliminated or phased out entirely, what changes to the KUSF are necessary or appropriate to complement the FCC's initiatives? Sprint Nextel suggests a Commission Order by early spring 2013.
  3.  
Does the Commission have the authority under Kansas law to implement the proposed changes? If not, what changes are needed to the Kansas statutes or other laws? Sprint Nextel suggests a Commission Order by end of summer 2013.
- Viaero

Viaero proposes that the following question be addressed in this Docket: "Should the KCC quantify the impact that the FCC's Order will have on the universal service fund monies available in Kansas?"

Viaero further proposes the following procedural schedule:

1.  
Proposed legal issues should be addressed through initial and reply briefs. Initial briefs should be due June 1, 2012, with reply briefs due July 2, 2012.
2.  
The policy issues proposed to be address should be initially discussed through a round table or industry meeting to discuss the status of the FCC's Order at that time. Viaero suggests the round table/industry meeting could occur in late summer or early fall2012.

US Cellular

US Cellular has not identified any additional issues to address or prioritized the issues at this time. US Cellular proposes a procedural schedule identical to that proposed by Vi aéro.

#### T-Mobile

T-Mobile proposes a procedural schedule identical to that proposed by Viaero and US Cellular.

#### CURB

CURB proposes a multi-phase approach to the Docket, as described further below. Phase I would address legal issues through briefs; Phase II would address policy issues in testimony and hearings; and Phase III would address, through testimony and hearings, implementation issues.

##### Phase 1: Legal Issues to be briefed

CURB suggests the Commission issue an Order on initial and reply comments on or about May 2, 2012. Legal issues should be briefed within 45 to 60 days after the Order, with a suggested due date of June 15<sup>1</sup> h, 2012. Reply briefs could be due two weeks later,

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approximately July 2, 2012. CURB proposes that the Commission issue an Order on the legal briefs within 30 days of receipt of the reply briefs.

The proposed legal issues for briefing are adequately identified on Attachment 2 to the Prehearing Officer's Order. CURB recommends the Commission also seek legal briefs on the following question, "What impact does FCC legal findings to date and those which may be pending have on legal issues in this proceeding?"

##### Phase II: Policy Issues to Address via Testimony and Hearings, or Comments without Hearing

CURB suggests Phase II should only occur after allowing a reasonable amount of time



for reconsideration requests and a final Commission Order regarding the legal issues. Parties should file simultaneous testimony or comments on or about November 23, 2012, with rebuttal testimony or reply comments due December 7, 2012, with hearings occurring December 17-19, 2012. Initial and reply briefs should be due on January 9 and 23, 2013, respectively. A Commission Order would then be due approximately February 20, 2013.

Phase II policy issues should focus on rules and principles to guide the decision making to achieve "rational outcomes and desired results," and consist of two primary areas:

1.

Explaining the specific policy proposed by each party in relation to the Commission's decisions on legal issues; and

2.

All remaining policy issues that include the "Issues for Comments/ Testimony" identified in Attachment 2 of the Pre hearing Officer's Order.

CURB proposes the following additional issues, which may be considered as being inferred in the current issues listed on Attachment 2:

1.

Explain the potential negative and positive impacts to basic local service rates and quality of service, KUSF assessments and charges, and service availability related to the proposed policies. Phase III would address the actual calculations of the policy impacts.

2.

Explain why the RLECs and other entities receiving KUSF support based on fiber investment and related costs to provide internet/broadband services and other IP-based network services that are not regulated by the Commission, should or should not be 100% recovered from the Federal USF/CAF or other federal alternatives instead of from the KUSF, which may be used to "incrementally" provide basic local and other services regulated by the KCC. This considers that the FCC is exerting authority and jurisdiction over all issues regarding fiber-based broadband and related services.

3.

For the RLECs and other entities receiving KUSF support based on fiber and copper investment related to an IP-based network, explain why all of the common loop costs should not be allocated fully to the IP-network and not to basic local and related services since the IP-network is not regulated by the Commission.

4.

Explain why explicit subsidies paid to non-rate-of-return or price cap incumbents from the KUSF for rural high-cost and suburban zones (possibly identified via a new cost model/study for basic services and a new definition of universal service)

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should not be offset for "excess" margins. The calculations of the policy impact would also be addressed in Phase III.

5.

Whether all, or a portion of KUSF support should be eliminated for any Kansas LEC if it has received an offsetting benefit, including COLR relief, or other beneficial policy change that has a qualitative or quantifiable benefit to the carrier. Phase III would address the implementation of this new policy impacts.

6.

For the RLECs, each location where circuit switched technology and IP-based networks exist should be identified, along with the carrier's plans to transition to an IP-based network and events that will trigger the transition. Parties should explain how changing from circuit-based to an IP-based network will impact the company based on the FCC reforms and related policy impacts to Kansas. Phase III implementation will address the actual calculations of the policy changes.

Phase III: Implementing Policy Issues via Testimony and Hearings

CURB proposes that Phase III commence around April 8, 2013. Parties should simultaneously file testimony on June 17, 2013, and rebuttal testimony July 1, 2013. A hearing should occur mid-July 2013. The implementation issues would focus on:

1.

Providing qualitative and quantitative impacts, including supporting documentation, of the policy decisions addressed in Phase II. Impacts should be determined for business and residential consumers, the telecommunications market in general, including carriers, and the parties paying into and receiving funds from the KUSF.

2.

Implementation of the policy issues previously listed by CURB for Phase II.

Other Policy Issues for Consideration

CURB proposes that the Commission issue a decision quickly regarding any interim policies related to the KUSF prior to any final decisions regarding policies and implementation issues. CURB is concerned that the RLECs and other parties, may

accelerate and increase their requests for KUSF support prior to any final Commission Orders. Thus, CURB proposes the Commission suspend all requests for supplemental or additional KUSF support until making a final decision in this proceeding. Alternatively, any supplemental and additional requests for KUSF could be considered to be "interim" and subject to "true-up depending upon the Commission final decision in this proceeding".

## Summary of Reply Comments

### RLECs Reply

The RLECs question the propriety of even filing reply comments since the RLECs assert the Commission never formally requested parties to file comments or reply comments in this proceeding because the request to file comments was made in a Prehearing Officer's Report and Order.

The RLECs aver that Sprint Nextel's and Verizon's proposals to discontinue the KUSF should not be considered. The RLECs contend that the Commission does not have authority to repeal K.S.A. 66-2008. The RLECs further argue that even the Legislature

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would exceed its authority if it attempted to discontinue KUSF support without providing a replacement means of cost and investment recovery under rate-of-return regulation.

The RLECs suggests that rather than filing comments on the procedural means of addressing specific issues, Eagle submitted substantive comments on the issues. The RLECs suggest those comments are premature at best and reserve their right to respond to Eagle's substantive comments at the appropriate time.

The RLECs suggests CURB and Viaero either disregarded or misunderstood the Prehearing Officer's Report and Order by taking the liberty to propose additional issues. The RLECs suggest it would be unjust, unreasonable and unfair to the other parties to allow CURB or Viaero to propose additional issues.

The RLECs concur with the viewpoint expressed by others that it is premature for the Commission to consider further proceedings given the uncertainty as to the impact, and legality, of the FCC's reforms.

## Century Link Reply

CenturyLink continues to assert that there are many unanswered questions as a result of the FCC Order, but there appears to be consistency between the parties about what can be addressed at this point. CenturyLink suggests the jurisdictional issues it identified as Phase 1 issues can be addressed at this point and should be evaluated before the Commission considers any changes to the KUSF.

CenturyLink suggests it is obvious that Sprint Nextel and Verizon want to eliminate the KUSF. The underlying problem is that they want to make significant changes to the KUSF before performing an analysis of the Commission's jurisdiction with respect to these issues.

CenturyLink suggests the Commission hold a workshop to provide the parties an opportunity to discuss the current status of the FCC Order. At that time, the parties will likely be in a better position to propose a timeframe to address the issues.

## CURB Reply

CURB disagrees with the parties that propose to substantially reduce the list of issues to be addressed and which propose to delay the review of these issues. CURB suggests the Commission remain flexible and allow the parties the discretion to address a comprehensive list of issues, and the parties can determine what issues are priorities for them to address in their briefs, comments, and testimony.

CURB suggests there is no need to delay the proceeding due to pending appeals, petitions for reconsideration or the like. CURB believes it is reasonable to proceed forward addressing a comprehensive list of issues, while allowing the parties the ability to express their concerns regarding specific unresolved or litigated issues.

## IV. PROJECTED IMPACT OF FCC ORDER ON KANSAS CARRIERS

The reforms adopted in the FCC's USF/ICC Order will impact the current FUSF and ICC revenues paid to Kansas ILECs and competitive ETCs operating in Kansas, which may in turn affect their Kansas operations and the KUSF.

Staff is providing a summary of the projected financial impacts of the FCC's USF/ICC Order, along with an overview of the individual reforms considered when determining the overall financial impact.

Federal USF support is comprised of the following cost recovery mechanisms:

1. High Cost Loop Support (HCLS) (\$36.631 );
11. Safety Net Additive (\$ 36.605);
111. Safety Valve Support (\$54.305);
- IV. Local Switching Support (\$54.301); and
- v. Interstate Common Line Support (\$54.901 -\$54.904).

All of the Kansas ILECs and thirteen competitive ETCs currently receive one or more of the above types of FUSF support. AT&T, CenturyLink, thirty-two RLECs, and eight competitive ETCs receive KUSF support, as well. 40

High cost loop (HCLS), safety net additive, and safety valve support (SNA and SVS) are included in the determination of the KUSF support paid to the RLECs and Century Link. Local switching support is used as a direct offset in the determination of the KUSF support paid to CenturyLink. Local Interstate Common Line support (ICLS) is not incorporated into the calculation of any carrier's intrastate revenue requirement or KUSF support; therefore, changes in that support mechanism will not impact the revenue requirement for any company's KUSF support. Staff notes that AT&T currently receives only Interstate Common Line Support; therefore, the FCC's FUSF support reforms have minimal impact on AT&T at this time.

In April 2012, Staff issued Data Request (DR) 1 to the ILECs requesting each company provide its estimated financial impacts that the FCC's Order may have on the company's Kansas operations. Staff notes that it did not issue DR 1 to the competitive ETCs because their KUSF support is based on the amount of support received by the ILEC. 41

On April 25, 2012, the FCC adopted and released an Order that modified the regression analysis to be used to determine the cost benchmarks for determining HCLS (HCLS Benchmark Order). The FCC determined that any HCLS money freed-up as a result of

40 RLECs currently not receiving KUSF support include: Bluestem Telephone Company (Bluestem), FairPoint Communications of Missouri (Fairpoint Missouri), Haviland Telephone Company, Inc. (Haviland); MoKan Dial, Inc. (MoKan); and Sunflower Telephone Company (Sunflower). Three

Competitive ETCs, Big River Telephone Company, LLC; S&T Communications, LLC; and Wildflower Telecommunications, LLC have received ETC designation for KUSF support but do not receive support at this time.

41 FUSF support for competitive ETCs is being phased-out over 5 years; however, the carriers may become eligible for other federal support, including Mobility Fund support.

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its reforms would be redistributed amongst qualifying carriers. The FCC directed the National Exchange Carrier Association (NECA) to recalculate the national average cost per loop (NACPL) for the NECA participants and determine each carrier's HCLS for the six-month period of July through December 2012 and the amount of Federal USF that would be redistributed, by carrier. NECA was directed to submit the information to the FCC within 30 days of the Order.

On June 22, 2012, the Wireline Competition Bureau (WCB) announced that NECA had filed the required information with the FCC on May 22, 2012, and that the information was now publicly available through the FCC's Electronic Filing System.

On July 3, 2012, Staff issued a second DR to the RLECs requesting the companies update their estimated impacts as a result of the FCC's HCLS Benchmark Order and NECA's redistributed support calculations. Staff limited the issuance of DR 2 to the RLECs because they, as a group, are the Kansas carriers directly impacted by the modifications adopted in the HCLS Benchmark Order.

The responses provided by the ILECs were deemed confidential; therefore, the confidential financial data contained in Staff's Report are aggregated to retain confidentiality. Staff is providing projected estimates for the calendar years ended December 31, 2012, and 2013. The aggregated data for 2012 and 2013 is provided in Attachments 1 and 2, respectively.

Staff cautions that the actual impact to any company may vary from the estimates provided due to future revisions by the FCC. Staff, however, does not anticipate that the actual FUSF impacts for the year ended December 31, 2012, will vary materially from

the estimates provided since the 2012 FUSF reforms have already been fully implemented. The actual ICC impacts will likely have a greater variance from the estimated impacts; however, Staff does not anticipate that the ICC variances will be material on an aggregated basis.

The FCC's Orders require the RLECs to provide updated data, which will be used to determine their 2013 FUSF and ICC recovery that will begin on July 1, 2013. Therefore, Staff anticipates some variance between the 2013 estimates and the actual 2013 FUSF and ICC financial impact.

#### Overall Estimated FUSF and ICC Impact for 2012

For the year ended December 2012, the RLECs estimate they will receive \$130.2 million in FUSF support and \$22.2 million in ICC revenues after the FCC's reforms are implemented. Based on the FCC's reforms, the RLECs estimate their total annual FUSF support will decline by approximately \$4.9 million, or 3.6%, in 2012. Approximately \$2.2 million, or 45%, is support intended to offset intrastate costs, with the remaining \$2.7 million (55%) identified as interstate support mechanisms. The RLECs also estimate they will receive an additional \$1.26 million, or a 6% increase, in ICC revenues for the year. The change in FUSF and ICC support is comprised of:

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- \$2.7 million reduction in ICLS, which is not included in the determination of a RLEC's intrastate revenue requirement for KUSF support;
- \$1.2 million reduction in FUSF support due to modifications and caps on corporate operations and investments;
- \$356,000 reduction in FUSF support due to the new monthly total FUSF support cap of \$250 per line;
- \$641,000 reduction in FUSF support due to the elimination of SNA and phase-out of Safety Net Additive support; and
- An estimated \$1.2 million increase in ICC revenues.

The \$1.2 million estimated ICC revenue increase is due to the FCC's ICC reforms, including reforms to address phantom traffic, access stimulation, and the appropriate ICC scheme for Voice over Internet Protocol (VoIP) providers.

#### Overall Estimated FUSF and ICC Impact for 2013

For 2013, the RLECs estimate they will receive \$119.2 million in FUSF support and \$21.1 million in ICC revenues. The RLECs estimate their cumulative FUSF support will decline by \$17.5 million (12.8%), while their ICC revenues will increase slightly, by approximately \$790,000 (3.9%). The \$17.5 million FUSF revenue reduction projection is comprised of the following components:

- \$9.2 million reduction in ICLS support;
- \$7 million reduction due to modifications and caps on corporate operations and investments;
- \$463,000 reduction from transitioning total FUSF support to \$250 per line per month; and
- \$798,000 for transitioning out SNA.

The estimated impacts vary widely between the companies and by year. In 2012, three RLECs account for approximately \$1.6 million of the total \$4.9 million estimated reduction in FUSF support (47%). In comparison, for 2012, one RLEC estimates it may experience an increase of \$295,500 in FUSF support. By 2013, this same RLEC estimates its FUSF support will decline by approximately \$6.5 million. For 2013, three RLECs account for approximately \$10.5 million, or 62%, of the total \$17.5 million reduction in support.

#### Overview of each of the FCC's reforms and projected impact

1.

Eliminate FUSF support for areas where an unsubsidized competitor provides services.

##### Background

This provision, applicable to price cap and rate of return regulated companies,<sup>42</sup> contains two parts: (1) eliminate FUSF support for a company in an area in which an unsubsidized

<sup>42</sup> USF/ICC Reform Order, ~ 281-283.



competitor provides broadband service at or above 4 Mbps down/ 1 Mbps up throughout the study area; and (2) eliminate FUSF support where an unsubsidized competitor offers service in an area which partially overlaps the service area of a recipient.<sup>43</sup> An "unsubsidized competitor" is defined as a company that:

- Does not receive any federal high-cost support;
- Provides terrestrial fixed voice and broadband services using its own facilities;
- Primarily serves end users at fixed endpoints using stationary equipment (e.g., cable modem); and
- Does not include: (1) service primarily based on use of mobile stations (a radio communication station capable of being moved and which ordinarily does move); (2) satellite service; or (3) Mobile/4G service.<sup>44</sup>

The WCB is required to develop information and identify where an unsubsidized competitor is providing service with 100% overlap of an ILEC's study area. <sup>45</sup> In the event 100% overlap occurs, FUSF support will be frozen and phased-out over a three year period. The FCC is also considering elimination of FUSF support in areas where an unsubsidized competitor offers services in an area that partially overlaps the ILEC's study area.

The FCC may define a service area as a census block. The FCC states that if CAP support is used in an area partially served by an unsubsidized competitor, the CAP recipient "must certify that, with respect to the frozen high-cost support dollars subject to this obligation, at least 50 percent of the locations served are in census blocks shown as unserved by an unsubsidized competitor, as shown on the National Broadband Map."

#### Impact to Kansas Companies

This provision does not currently affect any Kansas ILEC. If the FCC further defines a "service area" as a census block, it may impact AT&T and Century Link. Staff will continue to monitor further FCC actions regarding the implementation of these provisions.

## 2. Holding Company Levels will be used for CAF Funding and ICC Recovery

### A. CAF Funding -Phase I

#### Background

On April 25, 2012, the WCB released the CAP Phase I funding amounts available to price cap carriers. Companies were required to file a notice stating the amount of CAP Phase I funding they would accept and the wire center and census block(s) in which the ILEC intended to deploy broadband to meet the CAP funding obligations within 90 days. Alternatively, the carrier could affirmatively decline incremental CAP Phase I support for

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Id. at~ 24.

44 Id., ~ 103-104.

45 Id., ~ 284.

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2012. The allocated support for 2012, on a nation-wide basis by holding company, for AT&T and CenturyLink was \$47,857,148 and \$89,904,599, respectively.

#### Impact to Kansas Companies

In a July 24, 2012, letter, AT&T declined CAF Phase I support. AT&T stated it is evaluating options for rural broadband deployment and could not commit to CAF Phase I participation until it finalizes its strategy. AT&T further stated that its decision reflected its questions regarding the scope of CAF obligations and the Company's uncertainty as to how CAF Phase I participation may affect its efforts to be relieved of legacy regulatory obligations.

CenturyLink filed a Notice with the FCC on July 24, 2012, stating the Company would accept \$35,098,975 of the CAF Phase I support and that the Company would satisfy the broadband deployment obligation by deploying broadband to 45,289 locations.

CenturyLink filed an attachment that listed the locations where CenturyLink will deploy broadband in satisfaction of this requirement. The list does not contain any locations in Kansas.

CenturyLink's Notice further states that it will accept a total of \$81,496,675 of its eligible funding for CAF Phase I incremental support if its Waiver Petition<sup>46</sup> is approved. If the FCC grants CenturyLink's waiver petition in full as filed, CenturyLink will deploy broadband to 105,157 locations. CenturyLink filed a separate attachment which lists the locations where CenturyLink will deploy in satisfaction of this requirement. The list does not contain any locations in Kansas.

## B. ICC Recovery

### Background

Carriers are also permitted to determine how to allocate their ICC recovery, CAF support, and Access Recovery Charge (ARC) amongst their subsidiary and affiliate ILECs. <sup>47</sup> This approach allows companies to spread their eligible recovery across all customers, including recovery from customers under the \$30 Rate Ceiling, while limiting pressures on the CAF. Revenue will be imputed for ARC recovery purposes, whether the company elects to increase rates and recover the ARC or not. Seven holding companies have at least one ILEC in Kansas:

### Holding Company

AT&T Southwestern Bell Telephone Company

Century Link United Telephone Company of Eastern KS

United Telephone Company of KS

<sup>46</sup> CenturyLink Petition for Waiver, WC Docket Nos. 10-90, 07-135, 05-337, 03-109, GN Docket No. 0951,

CC Docket Nos. 01-92, 96-45, WT Docket No. 10-208, filed June 26, 2012. CenturyLink's waiver petition requested a limited waiver of 47 C.F.R. § 54.312(b), which requires CAF I Incremental Support

recipients to deploy broadband service to locations "shown as unserved by the then-current version of the

National Broadband Map."

<sup>47</sup> FCC Order, ~ 910.

United Telephone Company of South Central KS

United -Embarq Missouri

FairPoint Communications Bluestem, Sunflower, and FairPoint Missouri

Lynch (LICT) Haviland and JBN

TelAtlantic Communications Zenda

Total Communications Totah Telephone

Townes Telecommunications MoKan

#### Impact to Kansas Companies

Staff is not aware of any LEC that has increased its ARC charge to Kansas customers to offset a lower ARC collected from customers in other states.

### 3. Limit Total Federal Support to \$250 Per Month Per Line

#### Background

Effective January 1, 2012, total monthly FUSF support is capped at \$250 per line within a study area. For this provision, total FUSF support includes: HCLS, SNA, SVS, LSS, ; and ICLS. The FCC declined to apply this as a \$3,000 per line annual limit; therefore, the cap is to be applied in any month an ILEC's total FUSF support exceeds \$250 per line. The cap will be phased in as follows:

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July 1, 2012: FUSF is limited to \$250 per line per month plus two-thirds of the difference between the uncapped per-line FUSF support and \$250.

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July 1, 2013 -June 30, 2014: FUSF support is limited to \$250 per line per month plus one-third of the difference between the uncapped per-line FUSF and \$250.

- 

July 1, 2014: FUSF cannot not exceed \$250 per line per month.

To determine if the cap is met, the most recent line counts reported pursuant to Section 36.611(h) will be used (e.g. December 31, 2011, for July 2012). If a Company's total FUSF support must be reduced, it is to be reduced by an amount equal to the proportionate amount of FUSF support that would have been received absent the cap.

#### Impact to Kansas Companies:

Three Kansas LECs will likely be impacted by this provision. For 2012, it is estimated these three companies, on a combined basis, will experience a reduction of \$356,000. For

2013, it is estimated these three companies' FUSF support will be reduced by a total of \$463,000.

#### 4. Eliminate Safety Net Additive (SNA)

##### Background

In 2001, the FCC implemented SNA support to encourage new investment. SNA was to be provided only when a company's year-end Plant in Service increased by at least 14% per line. SNA was to be available for a five-year period and a company could re-qualify for SNA support for an additional 5-year period if it met the 14% per line investment

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threshold in a later year. Changes within the telecommunications industry, however, resulted in companies qualifying to receive SNA as a result of losing access lines since a loss in lines appeared that the company met the 14% per line investment threshold. In its USF/ICC Order, the FCC stated that approximately 67% of SNA support was paid due to line loss, not investment.

The FCC determined that a company currently receiving SNA due to new investment will continue to receive the SNA support for the applicable five-year period. The FCC further determined that to phase-out SNA, no new carriers will be allowed to qualify for SNA. For a company currently receiving SNA due to line loss, its SNA support was reduced 50% effective July 1, 2012, and all SNA support will be eliminated July 1, 2013.

##### Impact to Kansas Companies

In 2010, 18 RLECs received a total of \$1.0 million in SNA support. Of these 18 RLECs, only two received SNA support based on the 14% investment threshold. In 2011, 18 RLECs received SNA and three RLECs' SNA support was adjusted negatively, indicating the companies repaid prior SNA receipts, likely due to prior period true-ups. For 2012, 11 RLECs estimate their total SNA support will decline by \$640,600. For 2013, ten RLECs estimate their SNA support will decline \$798,023.

5.

Limit Excessive Capital Investment and Corporate Operations Expense for

## HCLS (RoR Carriers Only)

### Background

The FCC adopted a cap on the National Average Cost per Loop (NACPL) in 2001. The FCC's current USF reforms modify the formula used to determine the amount of corporate operations expense recovered through FUSF support mechanisms. Effective July 1, 2012, the FCC modified the formula to determine loop-related support, as follows:

- study areas with 6,000 or fewer total working loops: monthly per loop expense is  $\$42.337 - (.00328 \times \text{number of total working loops})$ , or  $\$63,000/\text{number of total working loops}$ , whichever is greater;
- study areas with more than 6,000, but fewer than 17,887 total working loops: monthly amount per loop shall be  $\$3.007 + (117,990/\text{number of total working loops})$ ; and
- study areas with 17,887 or more total working loops: monthly amount per loop is limited to \$9.56.

Effective January 1, 2013, the monthly per loop limit will be adjusted annually to reflect the annual percentage change in the Gross Domestic Product-Consumer Price Index (GDP-CPI).

In addition, the FCC adopted "Regression Analysis" benchmarks to curb the effect of some companies continually deploying new capital investment and thus, increasing their NACPL, while other companies that have a lower NACPL do not receive any, or only minimal, FUSF support. The benchmarks, effective for July 1 through December 31,

26

2012,48 apply if a company's actual reported costs exceed the benchmarks. The data used to determine the benchmark values and the benchmark values will be updated annually.

### Impact to Kansas Companies

All of the RLECs, except Craw-Kan, Pioneer, and Rural, have less than 6,000 working loops. Craw-Kan, Pioneer, and Rural each fall under the second provision for corporate operations expense.

The modifications to the Regression Analysis adopted by the FCC in its HCLS Benchmark Order resulted in Kansas RLECs, in the aggregate, retaining more FUSF support than initially determined. For 2012, the RLECs estimate their FUSF support will be reduced, in total, by \$1.2 million, comprised of the following:

- Corporate expense formula: Fourteen RLECs may be impacted by the corporate expense formula modification. Three RLECs estimate they will experience a cumulative \$44,000 FUSF support reduction while 11 companies estimate they will receive a combined increase of \$181,000 in FUSF support, for a net increase of \$138,000.

- Regression Analysis: Twenty RLECs estimate they will be impacted by the regression analysis. Of the 20 RLECs, 13 estimate a combined reduction of \$1.4 million in FUSF support as a result of the Regression Analysis. Seven RLECs, however, estimate they will receive an additional, combined \$38,000 of FUSF support. For 2013, the RLECs estimate these reforms will result in an overall \$7 million decrease in HCLS support, comprised of the following:

- Corporate expense formula: Eleven RLECs estimate they may receive \$67,000 of additional FUSF support as a result of the adopted expense formula modifications. Two RLECs estimate, in total, their FUSF support will decrease by \$42,000.

- Regression Analysis: Seven RLECs companies estimate they will receive, in total, an additional \$227,000 in FUSF support while 16 RLECs estimate they will experience total FUSF support reductions of \$7.3 million.

## 6. Federal Funding Reduction to Avoid Supporting Low Local Rates

### Background

The FCC intends to reduce reliance on FUSF support and adopted local service rate benchmarks. A company may elect not to increase rates; however, its FUSF support will be reduced by an imputed amount equal to the revenue the company could have received.

The FCC adopted a local rate floor benchmark of \$10, effective July 1, 2012, and \$14 effective July 1, 2013. The FCC estimates the benchmark will be \$15.62 on July 1, 2014; however, the FCC has directed the WCB to determine the actual benchmark rate by conducting a survey of local rates. The benchmark rate includes the local rate, state

48 Id., '1[1[ 27, 196.

27

subscriber line charges (SLCs ), state USF fees, and mandatory EAS fees. 49 Kansas does not have any mandatory EAS rates or a state SLC.

#### Impact to Kansas LECs

None of the RLECs were impacted by the adoption of the \$10 local rate benchmark because they all have local rates above the July 1, 2012, benchmark rate. Three companies, MoKan Dial, Inc., Fairpoint Missouri, and Sunflower Telephone have local rates less than the \$14 local rate benchmark that will be effective July 1, 2013. If the July 1, 2014, benchmark rate remains at \$15.62, Bluestem may have a local rate less than the local benchmark rate, as well.

The Commission is required to set a new affordable residential rate, effective March 1, 2013, pursuant to K.S.A. 66-2005(e). At this time, Staff estimates the new affordable rate will be \$16.75. 50 Historically, the Commission has not allowed RLECs that do not receive KUSF support to increase their local rates unless the company needed to do so to offset intrastate access revenue (and rate) reductions or the company qualified to receive KUSF support; however, the Commission may need to reassess this policy due to the potential reductions these carriers may receive in FUSF support.

#### 7. Transition Local Switching Support to ICC Reform Background

LSS is intended to allow RLECs serving 50,000 or fewer lines to allocate and recover a larger percentage of their switching costs (switching plus overhead) from the interstate jurisdiction by allocating a higher percentage of a company's switching costs to the interstate jurisdiction. LSS is intended to help maintain affordable local rates. When LSS was implemented, switches were fairly costly and not scalable compared to today's soft switches that are scalable and more cost effective.



The FCC recognized that if it eliminated LSS, states would become responsible for the switch investment costs and expenses currently recovered via LSS and may ultimately result in increased intrastate access or end-user customer service rates. The FCC, therefore, elected to retain responsibility for switching costs. The FCC's Order froze LSS at 2011 levels (based on the company's 2011 LSS revenue requirement) and began, effective July 1, 2012, to transition LSS into the interstate ICC revenue requirement. This will result in a company's ICC and LSS revenue requirement being recovered through access revenues, CAF support, local rates, and the Access Recovery Mechanism (ARC).

#### Impact to Kansas Companies

LSS support is not reflected in the determination of a RLEC's intrastate revenue requirement or KUSF support calculation, and the FCC has maintained jurisdiction over

49 ~ 238, 240-243.

50 Docket No. 13-GIMT-130-GIT, August 21, 2012, Order Opening Docket and Establishing Procedural Schedule.

28

the related switching costs and expenses through its transitioning of LSS into its ICC mechanism.

CenturyLink's KUSF support is determined by the high-cost model, which incorporates LSS support as an offset to the amount of KUSF support calculated. LSS reform may therefore impact the KUSF support payable to CenturyLink (and competitive ETCs in its service area). In 2011, CenturyLink received \$826,000 in LSS. Due to LSS being frozen, the LSS support recognized for KUSF support purposes will remain unchanged for 2012; however, further clarification of the FCC's reforms may impact how CenturyLink's KUSF support is determined.

8.

Apply Corporate Operations Expense Cap and Regression Analysis to Interstate Common Line Support (ICLS)

## Background

The FCC adopted limits to the amount of corporate operations expense and investment that will be used to determine a company's ICLS. Staff notes that ICLS is an interstate cost recovery mechanism and is not included in the determination of a RLEC's intrastate revenue requirement for KUSF support.

## Impact to Kansas Companies

For 2012, 22 rural LECs estimate their ICLS will be reduced by a net total of \$2.7 million:

- 

Corporate expense formula: Twenty companies estimate their combined ICLS support will be reduced by \$1.3 million. No company estimates that it will receive more ICLS support due to the modification of the corporate operations expense formula. Annual reductions range from \$1,000 to \$236,000.

- 

Regression Analysis: Thirteen RLECs estimate their combined ICLS will be reduced by \$1.47 million. No company estimates its ICLS support will increase as a result of this reform. Annual reductions range from \$2,600 to \$486,000.

For 2013, 22 rural LECs estimate their combined ICLS support will decline by \$9.2 million:

- 

Corporate expense formula: Nineteen companies estimate their ICLS support will decline by \$1.3 million. Reductions range from \$1,000 to \$238,000.

Regression Analysis: Fifteen companies estimate a combined ICLS reduction of \$7.9 million. The reductions range from \$5,200 to \$4.2 million.

9.

## Access Rate Modifications

### Background

The FCC determined it would adopt a uniform federal transition to bill-and-keep and developed a transition path to reach that goal. The FCC began the process of reforming intercarrier compensation by capping all interstate rate elements as of December 29,

2011, and capping intrastate terminating access rates for rate of return carriers and capping intrastate originating, terminating and reciprocal compensation rates for price cap carriers.

The FCC required carriers with intrastate switched access revenues greater than their interstate access revenues to implement intrastate access rate and revenue reductions, effective July 1, 2012. The revenue determinates were based on a company's intrastate and interstate access rates, as of December 29, 2011, and the company's intrastate access usage for the twelve-months ended September 30, 2011, for each rate element. The FCC prohibited a LEC with any intrastate access rate element that has a lower intrastate rate than the corresponding interstate rate from increasing the rate.

On July 1, 2013, intrastate terminating switched end office and transport rates and reciprocal compensation, if above the carrier's interstate access rate, are to be reduced to parity with the carrier's interstate access rate.

Once the initial interstate/intrastate parity is achieved in 2013, the FCC adopted the following transition path to reduce terminating access rates to bill-and-keep for the rate of return carriers (Kansas RLECs):

- 

Effective July 1, 2014, terminating switched end office and reciprocal compensation rates are reduced by one-third of the differential between end office rates and \$0.005;

- 

Effective July 1, 2015, terminating switched end office and reciprocal compensation rates are reduced by an additional one-third of the original differential to \$0.005;

- 

Effective July 1, 2016, terminating switched end office and reciprocal compensation rates are reduced to \$0.005;

- 

Effective July 1, 2017, terminating switched end office and reciprocal compensation rates are reduced by one-third of the differential between its end office rates (\$0.005) and \$0.0007;

- 

Effective July 1, 2018, terminating switched end office and reciprocal compensation rates are reduced by an additional one-third of the original differential between its end office rates as of July 1, 2016, and \$0.0007;

-

Effective July 1, 2019, terminating switched end office and reciprocal compensation rates are reduced to \$0.0007; and

- 

Effective July 1, 2020, terminating switched end office and reciprocal compensation rates are reduced to bill-and-keep.

Once the initial interstate/intrastate parity is achieved in 2013, the FCC adopted the following transition path to reduce terminating access rates to bill-and-keep for the price cap carriers (AT&T and Century Link):

- 

Effective July 1, 2014, terminating switched end office and reciprocal compensation rates are reduced by one-third of the differential between end office rates and \$0.0007;

30

- 

Effective July 1, 2015, terminating switched end office and reciprocal compensation rates are reduced by an additional one-third of the original differential to \$0.0007;

- 

Effective July 1, 2016, terminating switched end office and reciprocal compensation rates are reduced to \$0.0007; and

- 

Effective July 1, 2017, terminating switched end office and reciprocal compensation rates are reduced to bill-and-keep. Terminating switched end office and transport are reduced to \$0.0007 for all terminating traffic within the tandem serving the area when the terminating carrier owns the serving tandem switch; and,

- 

Effective July 1, 2018, terminating switched end office and transport are reduced to bill-and-keep for all terminating traffic within the tandem serving area when the terminating carrier owns the serving tandem switch.

The FCC created the ARC, subject to a \$30 rate ceiling, to allow companies to recover their reduction in intrastate access revenues. The ARC cannot be assessed to Lifeline subscribers or to any customer whose local rate is at or above \$30 per month. 51 Recovery must be weighted between residential and business consumers. The ARC is limited to a \$.50 increase for residential and small business customers per year and \$1.00 for multiline

businesses. Maximum ARC for price cap consumers is \$2.50 over 5 years and \$3.00 for rate of return carriers over 6 years. There is not a rate ceiling for multi-line business customers; however, the ARC cannot be assessed to a multi-line business customer when the ARC plus the existing SLC exceeds \$12.20 for the line; effectively limiting the ARC for multi-line business customers to \$3.00.

The FCC will also provide recovery from the CAF for ILECs to the extent the carrier's eligible recovery exceeds their permitted ARC. For price cap carriers that elect to receive CAF support, such support is transitional, phasing out over three years beginning in 2017. For rate-of-return carriers, ICC-replacement CAF support will phase down over time. This phase-out reflects, in part, the fact that such carriers will be receiving additional universal service support from the CAF that will phase in over time and is designed to reflect the efficient costs of providing service over a voice and broadband network.

For price cap carriers, the baseline ICC revenue recovery will decline 10% per year. For rate-of-return carriers, the baseline recovery declines 5% per year. This is a 5% reduction from the prior year's factor, not a straight 5% annual reduction. For example, recovery for January through June 2012 was 100%. Recovery for July through December is at 95%, resulting in an actual effective 97.5% annual reduction.

#### Impact to Kansas Companies

No Kansas carrier met the FCC's requirement to reduce its intrastate access rates or revenues 50% towards interstate levels, basically because intrastate rates in Kansas are lower than interstate rates. AT&T estimates that to bring its intrastate access rates and rate structure into parity with its interstate rates, it would increase intrastate revenues by

51 Id, at ~36-38.

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approximately \$1 million. CenturyLink, however, reduced its intrastate access rates by \$880 in order to bring its intrastate zone 3 access rate structure into parity with its interstate rates. The Company estimates it will reduce its intrastate revenues another \$880 on July 1, 2013, in order to be in complete parity with its interstate rates and rate structure.

The majority of the RLECs concur in the Blue Valley intrastate access tariff, which

mirrors the NECA interstate access tariff. These companies implemented intrastate access rate reductions, mainly to maintain parity between the interstate and intrastate access rate structure, but also to maintain parity with their non-traffic sensitive transport elements

(e.g. added Rate Band 11 for Dedicated Transport Entrance Facility, Direct Trunked Termination, and other rate elements). The Blue Valley tariff, however, maintained the December 29, 2011, intrastate access rates for local switching, information surcharge, and Rate Band elements lower than the interstate rate.

For 2012, the RLECs estimate a \$1.3 million net increase in ICC revenue:

- Nineteen companies estimate their ICC revenue will increase, in total, \$2.1 million. The largest projected company increase is \$1.05 million and the smallest increase is \$397.

- Seventeen companies estimate a combined net reduction of \$851,000. The largest reduction projected is \$275,000 and the smallest is \$3,600.

For 2013, the rural LECs estimate a \$790,000 net increase in ICC revenue:

- Seventeen companies estimate their ICC revenue will increase a total of \$2.1 million. The largest projected increase is \$913,000. The smallest projected increase is \$759.

- Nineteen companies estimate a combined net reduction of \$1.3 million. The largest reduction projected is \$344,000 and the smallest is \$3,300.

Docket No. 13-GIMT-004-GIT was opened to address K.S.A. 66-2005(c), which discusses adjusting intrastate access rate to parity with interstate rates. The FCC has not determined how, or when, it will reform originating access rates. The Commission, on September 14, 2012, issued an Order and determined that the Kansas RLECs' intrastate switched originating rates should be adjusted, effective July 1, 2013, to parity with their interstate rates. The Commission further determined that, due to the FCC's ICC reforms, intrastate terminating access rates may only be reduced to parity with interstate rates. Staff has not finalized its calculations; however, Staff estimates that adjusting the RLECs' intrastate originating access rates to parity with interstate rates would increase the RLECs' revenues by a total of approximately \$570,000. The adoption of only reducing intrastate access rates to interstate parity should have minimal impacts.

## V. STATUTORY CONFLICTS

Staff has reviewed the current Kansas statutes to determine whether any current Kansas statutes conflict with the FCC's Order and/or need to be reviewed in light of the FCC's Order. Staff is not recommending the following statutes be revised, but rather, that the

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statutes may warrant further review by the parties and the Commission, and ultimately the Kansas Legislature.

- Intrastate Access-K.S.A. 66-2005(c)

The FCC determined it would adopt a uniform federal transition to bill-and-keep and developed a transition path to reach that goal. The FCC began the process of ICC reformation by capping all interstate rate elements as of December 29, 2011, and capping the terminating intrastate access rates only for the rate of return regulated carriers. The transition path is six years for price cap carriers and nine years for rate of return carriers.

K.S.A. 66-2005(c) provides for changes to intrastate access rates, subject to the Commission's approval. K.S.A. 66-2005(c) states:

- (c) Subject to the commission's approval, all local exchange carriers shall reduce intrastate access charges to interstate levels as provided herein. Rates for intrastate switched access, and the imputed access portion of toll, shall be reduced over a three-year period with the objective of equalizing interstate and intrastate rates in a revenue neutral, specific and predictable manner. The commission is authorized to rebalance local residential and business service rates to offset the intrastate access and toll charge reductions. Any remaining portion of the reduction in access and toll charges not recovered through local residential and business service rates shall be paid out from the KUSF pursuant to K.S.A. 66-2008, and amendments thereto. Each rural telephone company shall adjust its intrastate switched access rates on March 1 of each odd-numbered year to match its interstate switched access rates, subject to the following:
- (1) Any reduction of a rural telephone company's cost recovery due to reduction of its interstate access revenue shall be recovered from the KUSF;
  - (2) any portion of rural telephone company reductions in intrastate switched access rates which would result in an increase in KUSF recovery in a single year which exceeds .75% of intrastate retail revenues used in

determining sums which may be recovered from Kansas telecommunications customers pursuant to subsection (a) of K.S.A. 662008, and amendments thereto, shall be deferred until March 1 of the next following odd-numbered year; and

(3) no rural company shall be required at any time to reduce its intrastate switched access rates below the level of its interstate switched access rates.

The Commission and the parties may wish to review this statute to determine whether it conflicts with the FCC's Order and whether it is necessary in light of the FCC's multistep transition to bill-and-keep, including a transition to parity in 2013.

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Statutory Definitions-K.S.A. 66-1,187

As a condition of receiving federal universal service support, the FCC's new rules require ETCs to offer voice telephony, as newly defined by the FCC, as a standalone service throughout their designated service area. The revised rule is as follows:

47 C.F.R. § 54.101 Supported services for rural, insular and high cost areas.

(a) Services designated for support. Voice telephony service shall be supported by federal universal service support mechanisms. The functionalities of eligible voice telephony services include voice grade access to the public switched network or its functional equivalent; minutes of use for local service provided at no additional charge to end users; access to the emergency services provided by local government or other public safety organizations, such as 911 and enhanced 911, to the extent the local government in an eligible carrier's service area has implemented 911 or enhanced 911 systems; and toll limitation for qualifying low-income consumers (as described in subpart E of this part).

(b) An eligible telecommunications carrier must offer voice telephony service as set forth in paragraph (a) of this section in order to receive federal universal service support.

In addition, the FCC's Order requires carriers that elect to receive additional CAF support to provide broadband with actual speeds of at least 4 Mbps downstream and 1 Mbps



upstream with latency suitable for real-time applications and services such as VoIP, and with monthly usage capacity reasonably comparable to that of residential terrestrial fixed broadband offerings in urban areas. 52

In light of the changes made by the FCC, the Commission and the parties to the proceeding may wish to review the state definitions of "universal service", "enhanced universal service" and "broadband", which are defined in K.S.A. 66-1,187 as follows, to determine whether there is any conflict with the FCC Order and/or whether any revisions to the definitions may be necessary: 53

- K.S.A. 66-1, 187(p ), "Universal service" means telecommunications services and facilities which include: single party, two-way voice grade calling; stored program controlled switching with vertical service capability; E911 capability; tone dialing; access to operator services; access to directory assistance; and equal access to long distance services.

- K.S.A. 66-1, 187( q), "Enhanced universal service" means telecommunications services, in addition to those included in universal service, which shall include: Signaling system seven capability, with CLASS service capability; basic and 52 FCC Order at~ 22.

53 Pursuant to K.S.A. 66-2002(k), the Commission may periodically review and, to the extent necessary, modify the definition of universal service and enhanced universal service, and KUSF, taking into account advances in telecommunications and information technology and services.

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primary rate ISDN capability, or the technological equivalent; full-fiber interconnectivity, or the technological equivalent, between central offices; and broadband capable facilities to: All schools accredited pursuant to K.S.A. 72-1101 et seq., and amendments thereto; hospitals as defined in K.S.A. 65-425, and amendments thereto; public libraries; and state and local government facilities which request broadband services.

- 

K.S.A. 66-1,187(a), "Broadband" means the transmission of digital signals at rates equal to or greater than 1.5 megabits per second.

#### VI. CONCLUSION

The FCC's Order contains numerous reforms that will affect carriers operating in Kansas in the coming years. Some of the effects are known, while many others remain unknown at this time. The Commission Staff will closely follow the FCC's proceedings and implementation of the FCC's USFIIICC Order and will continue to keep the Commission apprised of noteworthy events.

cc:

Patrice Petersen-Klein, Executive Director

Jeff McClanahan, Director of Utilities

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ATTACHMENT 1:  
CARRIER ESTIMATES FOR  
CALENDAR YEAR 2012

Docket

No.

12-GIMT-170-GIT-

Attachment

1

Estimates

For

Calendar

Year

2012

IMPACTS

INTRASTATE

INTERSTATE

Impact  
on  
ICLS  
3-Year  
Phase  
Modified  
Impact  
on  
HCLS  
New  
Corporate  
recovery  
of  
down  
-Federal  
Corporate  
recovery  
of  
Operations  
CAP  
EX  
and  
Total  
Estimated  
Total  
Estimated  
Total  
Estimated  
ICC  
Revenues  
USF  
limit  
to  
Eliminate  
Operations  
CAPEX  
and  
Expense  
Cap

OPEX  
Total  
Estimated  
Impact  
of  
ICC  
&  
USF  
Impact  
of  
USF  
Impact  
of  
ICC  
Total  
FCC  
USF  
Before  
FCC  
\$3,000/line/Y  
Safety  
Net  
Expense  
Cap  
OPEX  
(4/25  
(ICLS(  
Regression  
Impact  
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USF  
Reforms  
Reforms  
Reforms  
Prior  
to  
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Reforms  
ear

Additive

(SNA)

(HCLS)

Regression)

Interstate)

(Interstate)

Reforms

Bluestem Blue

Valley Columbus Council

Grove

CrawKan Cunningham Elkhart Golden

Belt

Gorham H&B Haviland Home JBN KanOkla LaHarpe Madison MoKan Moundridge Mutual Peoples

Pioneer Rainbow Rural S&A S&T South

Central

SKT Sunflower Totah Tri

County

Twin

Valley

UTA Wamego Wheat

State

Wilson Zenda Grand

Total

\$

(3,472,879)

\$

(4,910,978)

\$

1,256,276

\$

135,103,929

\$

20,932,463

\$

(356,209)

\$

(640,611)

\$

137,818

\$  
(1,328,126)  
\$  
(1,251,775)  
\$  
(1,472,076)  
\$  
(4,910,978)  
Increases  
975,954  
42,905  
2,107,882  
181,310  
37,792  
42,905  
Reductions  
\$  
(4,448,832)  
\$  
(4,953,883)  
\$  
(851,606)  
\$  
(356,209)  
(640,611)  
(43,492)  
(1,365,918)  
\$  
(1,251,775)  
\$  
(1,472,076)  
\$  
(4,953,883)  
  
Intrastate  
\$  
(2,187,128)  
\$  
(356,209)

(640,611)  
\$  
137,818  
\$  
(1,328,126)  
Interstate  
\$  
(2,  
723,851)  
\$  
(1,251,775)  
\$  
(1,472,076)

REDACTED  
9/14/2012

Docket  
No.  
12-GIMT-170-GIT-  
Attachment  
1

Estimates  
For  
Calendar  
Year  
2012

Bluestem

Blue  
Valley Columbus

Council  
Grove

CrawKan

Cunningham

Elkhart Golden

Belt

Gorham

H&B

Haviland

Home JBN

KanOkla

LaHarpe

Madison

MoKan

Moundridge

Mutual

Peoples

Pioneer Rainbow

Rural S&A S&T South

Central

SKT

Sunflower Totah Tri

County

Twin

Valley



UTA

Wamego

Wheat  
State

Wilson

Zenda

Grand  
Total

Increases Reductions

Intrastate

Interstate

Permitted

Intrastate

Interstate

Interstate

ICC

Revenues

Rate-of-Return

Recovery

Transport

Term.

Phase

Down

of

(Include

Baseline

for

(Adjusted

for

Intrastate

Term.

Revenue

Switched

Interstate

Net

Reciprocal

VoIP/Phantom

Access

Recovery

(para.

5%

Phase-

Switched

Access

After

Phase

Access

Transport

Compensation

Eligible

Funding

Traffic

Recovery

Eligible

CAF

899):

Down)

Revenue

Down

·Revenue

Access

Rates

Revenues

Before

ARC

Revenues)

Charge

(ARC)

Funding

\_\$\_  
22,796,548  
\$  
22,219,109  
\$  
2,513,063  
\$  
244,072  
\$  
5,477,886  
\$  
791,896  
\$  
470,816  
\$  
12,721,380  
\$  
55,629  
\$  
410,121  
\$  
12,255,630

Projected  
ICC  
Projected  
ICC

Revenues  
Before  
FCC  
Revenues  
After  
Reforms  
(Interstate  
FCC  
Reforms

TS  
Switch  
Rev  
Req  
+  
(sum  
of  
Ln  
5-9)  
State  
Term  
Rev)  
-See  
+(sum  
of  
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11Note(  
c)  
13)

\$  
20,932,463  
\$  
22,188,736

i

Total  
Estimated  
Impact  
of  
ICC

Reforms

\$  
(60,374)

91,683 (6,769) 38,345 7,589 55,726 (56,104) (20,632)! (13,771)

22,031

(41,947) (12,272) (72,063) (11,027)' (8,811) (48,018) 31,921 (25,889)

397

(5,207) 86,182 36,703

1,048,862

I

(3,632)

5,427

13,066 54,559

2,793

30,836 94,998 340,039

5,502

I

(274,833)<sup>1</sup> 141,223 (160,657) (29,601)

\$

1,256,276

2,107,882

\$

(851,606)

REDACTED

9/14/2012

ATTACHMENT 2:  
CARRIER ESTIMATES FOR  
CALENDAR YEAR 2013

Docket  
No.  
12-GIMT-170-GIT-  
Attachment  
2

Estimates  
for  
Calendar  
Year  
2013

IMPACTS  
INTRASTATE  
INTERSTATE

Impact  
of  
HCIS  
Eliminate  
due  
to  
low  
3-Year  
Phase  
Safety  
Net  
Modified  
local  
Rates  
Impact  
on  
ICIS

down  
-Federal  
Additive  
(SNA)  
Corporate  
Impact  
on  
HCIS  
(\$10  
-7/12,  
New  
Corporate  
recovery  
of  
CAP  
EX  
Total  
Estimated  
Total  
Estimated  
Total  
Estimated  
ICC  
Revenues  
USF  
cap  
(due  
to  
loop  
Operations  
recovery  
of  
CAPEX  
\$14-7/13,  
Operations  
and  
OPEX  
Total  
Estimated

Impact  
of  
ICC  
&  
Impact  
of  
USF  
Impact  
of  
ICC  
Total  
FCC  
USF  
Prior  
Before  
FCC  
\$3,000/line/Yea  
loss,  
not  
Expense  
Cap  
and  
OPEX  
{4/25  
\$15.62  
(TBD)Expense  
Cap  
(Regression  
Impact  
of  
USF  
USF  
Reforms  
Reforms  
Reforms  
to  
Order  
Reforms  
r



investment)

(HCIS)

Regression)

7/14)

(ICLS-Interstate)

(Interstate)

Reforms

Bluestem Blue

Valley Columbus

I

Council

Grove

CrawKan Cunningham Elkhart Golden

Belt

Gorham H&B

I

Haviland Home JBN KanOkla IaHarpe Madison MoKan

· Moundridge Mutual Peoples Pioneer Rainbow Rural S&A S&T South

Central

SKT Sunflower Totah Tri

County

Twin

Valley

UTA Wamego Wheat

State

Wilson Zenda Grand

Totals

\$

(16,709,183)

\$

(17,499,296)

\$

790,113

\$

136,653,479

\$

20,294,815

\$

(463,257)

\$  
{798,023)  
\$  
24,821  
\$  
(7,053,291)  
\_j\_\_\_\_  
(6,302)  
\$  
{1,31S,009)  
\$  
{7,888,236)  
\$  
(17,499,29~

Increases

\$  
900,032  
\$  
130,131  
\$  
2,056,081  
\$  
66,S92  
\$  
227,332

Reductions

\$  
(17,609,215)  
\$  
(17,629,427)  
\$  
{1,265,968)  
202,391  
\$  
(463,257)  
\$  
(798,023)  
\$

(41,770)  
\$  
(7,280,623)  
\$  
{6,302}  
\$  
(1,315,009)  
\$  
(7,888,236)

Intrastate  
\$  
(8,296,051)  
{463,257}  
\$  
(798,023)  
\$  
24,821  
\$  
(7,053,291)  
\$  
(6,302)

Interstate  
\$  
(9,203,245)  
\$  
(1,315,009)  
\$  
{7,888,236}

REOACTEO  
9/14/2012

Docket  
No.  
12-GIMT-170-GIT-

Attachment

2

Estimates

for

Calendar

Year

2013

Projected

ICC

Interstate

ICC

Revenues

Revenues

After

Rate-of-Return

Permitted

Phase

Down

(Include

FCC

Reforms

Baseline

for

Recovery

Intrastate

Term.

Intrastate

Interstate

Term.

of

Interstate

Net

Reciprocal

VoiP/Phanto

Access

ICC

Revenues

(sum  
of  
Ln  
5-9)+  
Total  
Estimated  
Recovery  
(para.  
(Adjusted  
for  
5%  
Switched  
Access  
Transport  
Switched  
Access  
Transport  
Compensation  
Eligible  
Funding  
mTraffc  
Recovery  
Eligible  
CAF  
Before  
FCC  
(sum  
of  
Ln  
11  
Impact  
of  
ICC  
899):  
Phase-Down)  
Revenue  
Revenue  
Revenue  
Access

Rates

Revenues

Before

ARC

Revenues)

Charge

(ARC)

Funding

Reforms

13)

Reforms

Bluestem Blue

Valley Columbus Council

Grove

CrawKan Cunningham Elkhart Golden

Belt

Gorham H&B Haviland Home JBN KanOkla LaHarpe Madison MoKan

,

Moundridge Mutual Peoples Pioneer Rainbow Rural S&A S&T South

Central

SKT Sunflower Totah Tri

County

Twin

Valley

UTA Wamego Wheat

State

Wilson Zenda Grand

Totals

\$

22,796,548

\$

21,115,304

\$

2,190,264

\$

216,235

\$

4,791,669

\$

711,063

\$

181,907

\$

13,024,150

\$

\$7,584

\$

1,034,818

\$

11,931,737

\$

20,294,815

\$

21,08~,93\_1\_\$

790,113

Increases

2,056,081

Reductions

(1,265,968)

Intrastate Interstate

REDACTED

9/14/2012

## CERTIFICATE OF SERVICE

12-GIMT-170-GIT

I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Notice of Filing

Report was served by electronic filing on this 26th day of September, 2012, to the following parties who

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